IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 21157 of 2006(R)

PETITIONER:

V.P.KUTTAPPAN, AGED 68 YEARS,
S/O.LATE PAPPAN, VARUNGAL HOUSE,
INCHIYANI P.O., KOTTAYAM.

BY ADV. SRI.A.JAYASANKAR
SRI.MANU GOVIND

RESPONDENTS:

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1. **HOUSING AND URBAN DEVELOPMENT CORPORATION, III FLOOR, SAPHALYAM COMPLEX, PALAYAM, TRIVANDRUM-34, REPRESENTED BY ITS REGIONAL MANAGER.**

2. **SOCIETY FOR INTEGRAL DEVELOPMENT ACTION (SIDA), REG.NO.K-29/84, KOOVAPALLY P.O.-686 518, KOTTAYAM, REPRESENTED BY ITS GENERAL DIRECTOR, GEORGE THOMAS.**

3. **DIRECTOR OF VIGILANCE INVESTIGATIONS, THIRUVANANTHAPURAM.**

BY ADV. SRI.K.R.KURUP for R1
SRI.C.R.SYAMKUMAR
SRI.K.J.ABRAHAM
SRI.LAVARAJ M.G.
SRI.C.R.VINOD KUMAR
SRI.SUNIL JACOB JOSE for R2
BY GOVERNMENT PLEADER SRI. M.R. SABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON 15/11/2007 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF RECEIPT DTD. 17/11/98 ISSUED BY 2ND RESPONDENT TO PETITIONER.**

EXT.P2: **COPY OF LETTER DTD. 15/02/05 ISSUED BY 2ND RESPONDENT TO PETITIONER.**

EXT.P3: **COPY OF LETTER DTD. 19/11/05 ISSUED BY 2ND RESPONDENT TO PETITIONER.**

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): **COPY OF THE DOCUMENTS EXECUTED BY THE PETITIONER WITH THIS RESPONDENT.**

EXT.R2(B): **COPY OF THE LETTER DTD. 09/02/2007 ADDRESSED TO THE 1ST RESPONDENT.**

EXT.R2(C): **COPY OF THE LETTER DTD. 13/03/2007 OF THE 1ST RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

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ANTONY DOMINIC, J.

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W.P.(C) No.21157 OF 2006(R)
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Dated this the 15th November, 2007

J U D G M E N T

This case discloses the plight of the petitioner who had availed of a loan from the 2nd respondent, a society registered under the Travancore-Cochin Literary Scientific & Charitable Societies Registration Act, 1955.

2. During 1998 the petitioner availed of a housing loan of Rs.43,845/- from the 2nd respondent Society. The loan was secured by deposit of his title deeds. The loan account was closed by the petitioner on 10.12.2004 by paying the entire amount due to the 2nd respondent. Thereupon, the petitioner requested for return of title deeds, when he was informed that the 2nd respondent had in turn deposited the title deeds with the 1st respondent and that on completion of procedural formalities the documents would be returned. As nothing materialised, the petitioner kept on repeating the request and eventually received Ext. P2 letter from

the 2nd respondent informing that in any event the documents would be returned within 45 days thereafter. The assurance was not honoured and finally by Ext. P6 undertaking was given by the 2nd respondent that the documents would be returned and even in the event of any delay, as an immediate relief the certified copies thereof would be obtained and given to the petitioner. Even thereafter, as the documents or its copies were not returned, the petitioner filed this writ petition praying for direction to the 1st respondent to return the title deeds of the petitioner and also for a direction to the 3rd respondent to conduct an enquiry into the fraudulent transactions of the 2nd respondent.

3. The 2nd respondent has filed a counter affidavit in which, it is admitted that the title deeds deposited by the petitioner and others were deposited with the 1st respondent as security for availing of finance, which in turn was distributed among the beneficiaries including the petitioner. It is stated that the 2nd respondent had disbursed Rs.9.07 crores on similar transactions and that till about 2004, the title deeds of the beneficiaries were released by the 1st

respondent. According to the 2nd respondent, unlike in the past the 1st respondent was refusing to release title deeds on receipt of prorata payments. The 2nd respondent would therefore justify its failure on the ground that the 1st respondent is refusing to release the documents.

4. Although no counter affidavit has been filed by the 1st respondent, learned counsel who appeared on its behalf contended that financial assistance was availed of by the 2nd respondent and that in terms of the agreement between them, the 2nd respondent has deposited title deeds of the beneficiaries as security for the loan availed of. It is also stated that the 2nd respondent had committed default in re-payment and it was therefore that they refused to release the documents. It was made clear that in view of the default they were not willing to release the documents on prorata payments.

5. I have considered the submissions made by both sides. In my view respondents 1 and 2 cannot take shelter under some agreement which they have entered into between themselves. It is the admitted position

that the petitioner had deposited his title deeds to secure the financial assistance availed of by him in terms of the agreement that the petitioner had entered into with the 2nd respondent. The 2nd respondent was obliged to return the documents once the transaction is closed by satisfying the entire dues. The 2nd respondent has also no case that the petitioner was at any time informed that the 2nd respondent will be depositing the title deeds of the petitioner with the 1st respondent. They have also no case that the petitioner had agreed for any such condition. In the absence of any such agreement with the petitioner also as a party, the 2nd respondent had no authority to deposit the title deeds of the petitioner with the 1st respondent.

6. It is quite strange that a public sector undertaking like the 1st respondent had chosen to accept title deeds of beneficiaries like the petitioner without their concurrence and I very much doubt if it was an innocent mistake. This the 1st respondent should have verified before accepting the title deeds of beneficiaries like the petitioner. If the 2nd

respondent was depositing the title deeds without authority of the beneficiary, the 1st respondent was also acting unauthorisedly and illegally, when it had chosen to accept these documents in deposit. Therefore in this case, both respondents 1 and 2 are equally to be blamed for the defaults they had committed.

7. The unauthorised action of the 2nd respondent or irregular acceptance of the documents by the 1st respondent cannot bind the petitioner and such illegal action of respondents 1 and 2 cannot justify the failure of the 1st respondent in releasing the documents to the 2nd respondent or the 2nd respondent's failure in returning the documents to the petitioner. For the illegality that the 1st respondent has committed, the 1st respondent will have to suffer for itself. I am satisfied that the 1st respondent is liable to return the documents of the petitioner to the 2nd respondent and the 2nd respondent shall in turn hand over the documents to the petitioner.

8. Accordingly, I direct that the 1st respondent shall on receipt of this judgment forthwith return the documents deposited by the petitioner to the 2nd

respondent and on receipt thereof by the 2nd respondent the documents shall be immediately handed over to the petitioner. This, however, will not exonerate the 2nd respondent from its other contractual obligations to the 1st respondent.

9. Although I have every reason to doubt the bonafides of the conduct of respondents 1 and 2, particularly when the 1st respondent has chosen to accept the documents in deposit, without the concurrence of the beneficiaries, still I am not ordering an enquiry by the 3rd respondent. This is for the technical reason that the petitioner has not filed any application before the 3rd respondent in this behalf. I leave it open to the petitioner to pursue this matter with the authorities concerned.

The writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-